

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

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CC:CORP:B04
PLR-154409-06

Date:
May 17, 2007

Legend

Distributing =

Controlled =

FSub A =

Sub B =

Sub C =

Sub D =

FSub E =

FSub F =

FSub G =

FSub H =

FSub I =

FSub J =

Business A =

Business B =

Business C =

A =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your November 21, 2006 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in the support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of earnings and profits of the distributing or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in the distributing or controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Publicly traded Distributing is the common parent of an affiliated group of corporations that file a consolidated return. Distributing wholly owns FSub A, Sub B, Sub C, Sub D, FSub E, and FSub F. Distributing directly engages in Business A and Business B, and members of its affiliated group conduct Business C.

Financial information has been submitted which indicates that Distributing’s Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

To achieve what are represented to be valid corporate business purposes, Distributing has proposed the following steps (collectively, the “Proposed Transaction”):

(i) Distributing will form Controlled.

(ii) Controlled will form FSub G, which in turn, will form FSub H. It is expected that FSub H will elect to be disregarded as an entity separate from its owner for federal income tax purposes. Controlled will also form FSub I. The formations of FSub G, FSub H, and FSub I will be referred to together as “the Formations.”

(iii) Distributing will contribute a to FSub E.

(iv) FSub E will form FSub J and contribute b to FSub J.

(v) FSub J will acquire c% (less than 20%) of the stock of Controlled in exchange for d.

(vi) Distributing will transfer its FSub A, Sub B and Sub C stock, assets utilized in Business B, e and f to Controlled in exchange for Controlled stock and the assumption by Controlled of certain liabilities associated with the transferred assets (collectively, the "Contribution").

(vii) Distributing will distribute all of the Controlled stock received in step (vi) above, pro rata, to the Distributing shareholders (the "Distribution"). Distributing will not distribute fractional shares of Controlled stock in the Distribution. Rather, a distribution agent will aggregate fractional shares of Controlled stock, sell them on the open market, and distribute the net proceeds of the sale to beneficial owners of Distributing stock who otherwise would have received the Controlled fractional shares.

In connection with the Proposed Transaction, Distributing and Controlled will enter into various ancillary agreements (collectively, the "Ancillary Agreements"), including a Transition Services Agreement.

Representations

The following representations have been submitted regarding the Contribution and the Distribution:

(a) Except for obligations that may arise under the Ancillary Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution. Any indebtedness owed by Controlled to Distributing will not constitute stock or securities.

(b) No part of the Controlled stock to be distributed by Distributing will be received by a Distributing shareholder as a creditor, employee, or in any capacity other than that of a shareholder.

(c) The c% of Controlled stock held by FSub J after the Distribution is motivated by the following business purposes: (i) to provide the Distributing group (and FSub J in particular) with a more efficient means of raising capital, (ii) to send a positive signal to the market by showing Distributing's continuing confidence in Controlled's businesses after the Distribution, (iii) to ensure a smooth transition by demonstrating to Controlled's employees, customers, and investors that the division of the business is amicable and that a spirit of cooperation will exist between Distributing, Controlled, and their employees, and (iv) to maintain Business A's g presence through its relationship with Controlled.

(d) Except for A (a member of Distributing's board who will also serve on Controlled's board for a transition period), there will be no common officers or directors between Distributing and Controlled after the Distribution. A will not hold any other

position in Controlled as an officer or otherwise, and he will not be involved in the day-to-day operations of Controlled.

(e) The c% of Controlled stock held by FSub J will be disposed of as soon as a disposition is warranted, but in any event, not later than five years after the Distribution.

(f) FSub J will vote the c% of Controlled stock in proportion to the votes cast by Controlled's other shareholders.

(g) The five years of financial information submitted on behalf of Distributing's Business A and Business B is representative of each business's present operations, and there have been no substantial operational changes with regard to either business since the date of the last financial statements submitted.

(h) Following the Proposed Transaction, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its own separate employees, except for services to be provided by Distributing to Controlled, or vice versa, for a transitional period following the Distribution pursuant to the Transition Services Agreement.

(i) The Distribution is being carried out for the following corporate business purposes: the Distribution will position each of Distributing and Controlled to separately pursue the business and financial strategies that best suit its long-term interests, allowing each corporation to develop capital structures, financing strategies and equity-based compensation plans designed to best meet the underlying fundamentals of its business and the industries in which it operates. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(j) The Distribution is not used principally as a device for the distribution of earnings and profits of Distributing, Controlled or both.

(k) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(l) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(m) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(n) The liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of businesses and are associated with the assets being transferred.

(o) Immediately after the Distribution (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Proposed Transaction, or (3) Distributing and Controlled will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(p) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(q) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account Distributing may have in the Controlled stock (or a member may have in the stock of another member that is required to be taken into account by § 1.1502-19) will be included in income immediately before the Distribution to the extent required by regulations (see § 1.1502-19).

(r) Payments made in connection with all continuing transactions, if any, between Distributing (and its affiliates) and Controlled (and its affiliates) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(s) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(t) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(u) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year-period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(v) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock possessing a 50% or greater interest (within the meaning of § 355(b)(4)) in Distributing and Controlled (including any predecessor or successor of any such corporation), taking into account the special rules of § 355(e)(3)(A).

(w) The payment of cash in lieu of fractional shares of Controlled stock will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in connection with the Distribution in lieu of fractional shares of Controlled stock will not exceed 1% of the total consideration that will be distributed in the Distribution. It is intended that no Distributing shareholder will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled stock.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Contribution and the Distribution:

(1) The Contribution, together with the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” under § 368(b).

(2) No gain or loss will be recognized by Distributing in the Contribution (§ 361(a), § 357(a) and § 357(c)).

(3) No gain or loss will be recognized by Controlled in the Contribution (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) The holding period of each asset received by Controlled in the Contribution will include the period during which such asset was held by Distributing (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing in the Distribution (§ 361(c))

(7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing stockholders on their receipt of the Controlled stock in the Distribution (§ 355(a)).

(8) Each Distributing shareholder's basis in a share of Distributing stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing stock with respect to which the Distribution is made and the share of Controlled stock received with respect to the share of Distributing stock in proportion to their fair market values. If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock (or portion thereof) is received with respect to a particular share of Distributing stock (or portion thereof), the shareholder may designate which share of Controlled stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the Distribution.

(9) Each Distributing shareholder's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that the shareholder held such Distributing stock as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e).

(11) A Distributing shareholder who receives cash in lieu of a fractional share of Controlled stock will recognize gain or loss measured by the difference between the amount of cash received and the adjusted basis of the fractional share (as determined under ruling (8) above) (§ 1001). If the fractional share interest is a capital asset in the hands of the Distributing shareholder, then gain or loss will be capital gain or loss, subject to the conditions and limitations of Subchapter P, Chapter 1 of the Code (§§ 1221 and 1222).

(12) The holding by FSub J of c% of Controlled's stock as described herein will not adversely affect the Distribution's qualification under § 355.

(13) Following the Distribution, Controlled will not be considered a successor to Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its subsidiaries that are “includible corporations” under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled as the common parent for the first tax year following the Distribution and all tax years thereafter.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) whether the Distribution will satisfy the business purpose requirement of § 1.355-2(b);

(ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7);

(iv) the federal income tax consequences or effects of the Formations described in step (ii),

(v) the federal income tax consequences or effects of the contribution to FSub E described in step (iii), the formation and contribution to FSub J described in step (iv), and except as described in ruling (12) above, FSub J's acquisition of the Controlled stock described in step (v) (including FSub J's basis and holding period in such stock),

(vi) the aspects of the Proposed Transaction under §§ 367 or 1248, and

(vi) the federal income tax consequences and effects of any transactions consummated under the Ancillary Agreements.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc:

Director: